

**CALIFORNIA COASTAL COMMISSION**

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**W12a**

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 Staff: D.Carl  
 Staff report: 7/26/2000  
 Hearing date: 8/9/2000

## APPEAL STAFF REPORT SUBSTANTIAL ISSUE DETERMINATION

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**Appeal number**.....**A-3-SCO-00-033, Hinman-Skees Residence**

**Applicants**.....Brian Hinman & Suzanne Skees

**Appellants**.....Commissioners Sara Wan and Christina Desser  
 Citizens For Responsible North Coast Planning  
 Friends of the North Coast  
 Sierra Club

**Local government** .....Santa Cruz County

**Local decision**.....Approved with conditions (March 14, 2000)

**Project location**.....Approximately ¾ of a mile inland of State Highway One at the Santa Cruz/San Mateo County border inland from Año Nuevo State Reserve, North Santa Cruz County (APN 054-061-16).

**Project description** .....Construct an approximately 15,000 square foot, 3-story, 51 feet high residential dwelling with associated terraced grounds and hardscape, detached accessory structure and swimming pool, including over 5,500 cubic yards of grading for the building site, courtyard, driveway and access road.

**File documents** .....Santa Cruz County Certified Local Coastal Program (LCP); Santa Cruz County Coastal Development Permit Application File 98-0426.

**Staff recommendation** ....**Substantial Issue Exists**

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**Summary of staff recommendation:** This is the substantial issue determination for appeal number A-3-SCO-00-033 (the Commission previously opened and continued the substantial issue hearing for this matter on May 11, 2000). Staff recommends that the Commission find that a substantial issue exists with respect to this project's conformance with the certified Santa Cruz County Local Coastal Program (LCP) and take jurisdiction over the coastal development permit for the project. Staff further recommends that the Commission continue the de novo hearing of the coastal development permit to allow the applicant to prepare additional biotic information and to consider alternative projects that meet the requirements of the certified LCP. Staff will subsequently prepare a recommendation for a de novo hearing of the project at a future Coastal Commission meeting.



**California Coastal Commission**  
**August 2000 Meeting in Huntington Beach**

Staff: D.Carl Approved by:  
 A-3-SCO-00-033 (Hinman-Skees SFD) stftrpt.doc

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## 1. Staff Report Summary

The Santa Cruz County approval that is the subject of this appeal is for a large residential dwelling compound situated on an agriculturally-zoned property inland of State Highway One and Año Nuevo State Reserve at the Santa Cruz/San Mateo County border. This stretch of mostly undeveloped Central Coast represents the grandeur of a bygone (in many places) agrarian wilderness California and is a critical public viewshed for which the LCP dictates maximum protection.

The Appellants contentions fall generally into four areas: (1) visual resource protection on Santa Cruz County's north coast; (2) protection of Environmentally Sensitive Habitat (ESHA), primarily Monterey pine; (3) appropriate land use on agriculturally zoned parcels; and (4) cumulative impacts in each issue area from this and other such potential development on the north coast. Because the County-approved development would be located within a Monterey pine forested area considered ESHA by the LCP, because it would be visible from the critical north Santa Cruz coast public viewshed (particularly from Año Nuevo State Reserve) protected by the LCP, because it involves 6 times more site disturbance than that allowed by the LCP at this location, because of its enormous mass and scale in relation to existing agricultural north coast character, and because it may induce a similar type of future development that would exacerbate such individual impacts on a cumulative basis as prohibited by the LCP, a substantial issue exists with respect to this project's conformance with the certified LCP.

Staff recommends that the Commission take jurisdiction over the coastal development permit for the proposed project. Staff further recommends that the Commission continue the de novo hearing of the coastal development permit to allow the Applicant to prepare additional biotic information to better define the extent of ESHA at this location and to consider alternative projects that may meet the requirements of the certified LCP.

## 2. Local Government Action



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On January 21, 2000, the Santa Cruz County Zoning Administrator approved the proposed project subject to multiple conditions. By request of Supervisor Mardi Wormhoudt, chairperson of the Santa Cruz County Board of Supervisors, the Zoning Administrator's action on the proposed project was elevated for Board of Supervisors consideration due to concerns over potential visual impacts on nearby Año Nuevo State Reserve, and other related issues regarding the size and height of the proposed residence. The Board considered this matter on March 14, 2000. By 3-2 vote, the Board approved a Coastal Development Permit (CDP) and several related permits for the proposed project.<sup>1</sup> See Exhibits A, B and C for the County's staff report, findings and conditions on the project.

Notice of the Board's action on the CDP was received in the Commission's Central Coast District Office on Monday, March 20, 2000. The Commission's ten-working day appeal period for this action began on Tuesday, March 21, 2000 and concluded at 5:00 P.M. on Monday, April 3, 2000. Four valid appeals (see below) were received during the appeal period.

### 3. Appeal Procedures

Coastal Act Section 30603 provides for the appeal of approved coastal development permits in jurisdictions with certified local coastal programs for development that is (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tideline of the sea where there is no beach, whichever is the greater distance; (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff; (3) in a sensitive coastal resource area; (4) for counties, not designated as the principal permitted use under the zoning ordinance or zoning district map; and (5) any action on a major public works project or energy facility. This project is appealable because residential development is not the principal permitted use in the subject agricultural zoning district.

The grounds for appeal under section 30603 are limited to allegations that the development does not conform to the standards set forth in the certified LCP or the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct a de novo coastal development permit hearing on an appealed project unless a majority of the Commission finds that "no substantial issue" is raised by such allegations. Under section 30604(b), if the Commission conducts a de novo hearing, the Commission must find that the proposed development is in conformity with the certified local coastal program. Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act, if the project is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone. This project is not located between the nearest public road and the sea and thus, this additional finding need not be made in a de novo review in this case.

The only persons qualified to testify before the Commission on the substantial issue question are the

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<sup>1</sup> Other approvals granted were a Large Dwelling Review, a Residential Development Permit, and Preliminary Grading Approval. The CEQA Negative Declaration was also certified by the Board at this time.



Applicant, persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing. Any person may testify during the de novo stage of an appeal.

## 4. Appellants' Contentions

### A. Appeal of Commissioners Sara Wan and Christina Desser

The two Commissioner Appellants contend that the County-approved project raises substantial issues with respect to the project's conformance with core LCP issues regarding the type and scale of development on the rural north Santa Cruz County/south San Mateo County coast, development within and adjacent to ESHA, and preserving critical coastal viewsheds.

Please see Exhibit D for the Commissioner Appellants' complete appeal document.

### B. Appeal of Citizens For Responsible North Coast Planning

Citizens for Responsible North Coast Planning contend that the proposed project would significantly disturb the public viewshed from Highway 1 and Año Nuevo Reserve (contrary to LCP Policy 5.10.3), would be visible from the beach (contrary to LCP Section 13.20.130(d)(1)), would not provide adequate screening, would be out of character with the surrounding area (contrary to LCP Section 13.20.130(b)(1)), and would have cumulative and growth inducing impacts on the surrounding area (contrary to LCP Policy 2.1.4).

Please see Exhibit E for the Citizens for Responsible North Coast Planning's complete appeal document.

### C. Appeal of Friends of the North Coast

Friends of the North Coast contend that the County-approved project is inconsistent with LCP policies protecting environmentally sensitive habitats such as indigenous Monterey pine forest and listed species habitat (LCP Policies 5.1.3, 5.1.6, 5.1.7, and 5.1.9), commercial agricultural land (LCP Policies 5.13.5, 5.13.6, 5.13.28, 5.13.29), North Coast and Año Nuevo visual resources (LCP Policies 5.10.3 and 5.10.5, and LCP Section 13.10.325), "least disturbed watershed" resources (LCP Objective 5.5c), and that the project would have an overall cumulative impact on all of these.

Please see Exhibit F for the Friends of the North Coast's complete appeal document.

### D. Appeal of Sierra Club

The Sierra Club contends that the proposed project is inconsistent with the agricultural zoning, would significantly disturb the public viewshed from Año Nuevo Reserve (contrary to LCP Policy 5.10.3), would be visible from the beach (contrary to LCP Section 13.20.130(d)(1)), would not provide adequate



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screening, would be development within environmentally sensitive habitat (for Monterey pine, coastal grassland, and red-legged frog), would have cumulative and growth inducing impacts on the surrounding area (contrary to LCP Policy 2.1.4), would have future cumulative impacts should the use change to visitor serving, and would adversely impact “least disturbed watershed” resources.

Please see Exhibit G for the Sierra Club’s complete appeal document.

### E. Summary of Appeal Issues

The Appellants contentions fall generally into four areas: (1) visual resource protection on Santa Cruz County’s north coast; (2) protection of ESHA, primarily Monterey pine; (3) appropriate land use on agriculturally zoned parcels; and (4) cumulative impacts in each issue area from this and other such potential development on the north coast. Each of these is discussed in detail in the findings that follow.

## 5. Procedural History (Post-County Action)

On May 11, 2000, the Commission opened and continued the substantial issue hearing on the appeal because Commission staff was unable to prepare a staff report with a full analysis and recommendation in time for the Commission’s May meeting due to staff report noticing and mailing deadlines. The Applicant subsequently waived their Coastal Act Section 30621 right to a hearing within 49 days of the appeal file date.

The Applicant has submitted two substantive additional items of information since the County acted on the CDP: (1) a forester’s report (by Stephen Staub and Stephen McGuirk, dated May 2000) analyzing the forest resources in the immediate vicinity for their habitat and screening values; and (2) a cumulative impact analysis describing the proposed project in relation to possible future development in the surrounding area (dated received May 15, 2000). See Exhibits K and L. These materials also have been used in the preparation of this staff report.

## 6. Staff Recommendation on Substantial Issue

The staff recommends that the Commission determine that a **substantial issue** exists with respect to the grounds on which the appeal was filed. A finding of substantial issue would bring the project under the jurisdiction of the Commission for hearing and action.

***Motion.*** *I move that the Commission determine that Appeal Number A-3-SCO-00-033 raises **no** substantial issue with respect to the grounds on which the appeal has been filed under §30603 of the Coastal Act.*

***Staff Recommendation of Substantial Issue.*** *Staff recommends a **no** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue*



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*and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.*

***Resolution To Find Substantial Issue.*** *The Commission hereby finds that Appeal Number A-3-SCO-00-033 presents a substantial issue with respect to the grounds on which the appeal has been filed under §30603 of the Coastal Act regarding consistency with the Certified Local Coastal Program.*

## Recommended Findings and Declarations

The Commission finds and declares as follows:

### 7. Project Description

#### A. Project Location

The proposed project is located in the coastal foothills approximately  $\frac{3}{4}$  of a mile inland of State Highway 1 near the Santa Cruz – San Mateo County border. Año Nuevo State Reserve lies seaward and southwest of the site across Highway 1. The Reserve is a protected dune and beach area and a well-known attraction for coastal visitors – approximately 240,000 day-users annually visit the Reserve for docent-guided tours of the spectacular wild coastline and the elephant seals who make this area home. This area is part of the stretch of largely undeveloped coastal lands located between Half Moon Bay to the north and Santa Cruz City to the south. The Monterey Bay National Marine Sanctuary, the largest of twelve such federally protected sanctuaries nationwide, is directly offshore.

The undeveloped project site itself is approximately 50 acres in size and is designated for agriculture in the LUP and zoned CA (Commercial Agriculture) in the County Code. This site was originally part of the larger Steele Ranch that at one time encompassed roughly 7,000 acres dedicated primarily to dairy operations. The properties were subdivided in the 1950s creating the subject parcel and its neighboring properties. Existing single family residences are present on both the CA-zoned parcel immediately to the north (Pfluke) and the CA-zoned parcel immediately to the south (Boling). The heavily forested and steep site to the east is undeveloped and zoned TP (Timber Production). The property due west (between the subject site and Highway 1) is an 84 acre site for which the Commission is currently considering an appeal of a proposed single family dwelling (A-3-SMC-99-066, David Lee). The border between Santa Cruz and San Mateo County is coterminous with the western parcel line of the subject parcel.

The site slopes roughly from east to west with the highest elevations located at the northeast corner of the property where scattered Monterey pine, oak, madrone, and fir trees predominate. This tree canopy extends almost exclusively along the eastern property line of the site and is the outlying edge of a larger forested area extending along the steep arroyo of Año Nuevo Creek located east and north of the subject site. The proposed house-site lies roughly half way along the eastern property line within the scattered



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tree canopy there. The majority of the parcel slopes more gently to the southwest portion of the property to a pond and riparian habitat area adjacent to the existing roadway providing access to the residence to the south. This pond area drains through culverts into a larger riparian arroyo steeply sloping towards Highway 1 approximately  $\frac{3}{4}$  of a mile to the southwest. The majority of the parcel is gently sloped mixed grassland, predominantly non-native with some intermixed native grasses and coyote brush scrub (see ESHA findings for more detail on site ecology). The land on the subject site has been fallow for some time.

See Exhibit H for general project location and site environs.

### B. Project Description

The Applicant proposes to construct a 3 story, 51 foot tall, 15 room single-family dwelling, with a basement, 3-car connected garage (with a room above), swimming pool and assorted pathways, courtyards, and retaining walls. All told, approximately 15,000 gross square feet of interior residential space would be developed, and the overall residential compound (house, garage, pool, paths, and surrounding ornamentally landscaped grounds) would occupy over an acre. The proposed development would be in a Gothic Revival architectural style utilizing wood frame construction, steeply pitched metal roofs, tall narrow cross gables, multiple mullion windows, and board and batten siding. The roof would be constructed of mottled copper best described as a dark forest green hue, while the body of the structure would be a mix of muted brown and green colors. The residence is modeled after the historic Rose Hill Plantation located in South Carolina.

The Applicant also proposes to pave the existing approximately 15 foot wide unpaved access road serving the existing adjacent residences and to develop California Department of Forestry-required turnouts (12 by 40 feet) at several locations. A new 12 to 14 foot wide driveway would also be graded and paved, extending approximately 1,000 feet (and approximately 150 feet in elevation) from the existing access road to the proposed home site. An estimated 5,560 cubic yards of balanced cut and fill grading would be required to accommodate the house and road improvements.

See Exhibit I for proposed site plans and elevations.

### C. County Approval

The County approved the proposed project with multiple conditions designed to address the issues highlighted by the appeal, including requirements for:

- House colors in muted green and brown to blend with the surrounding landscape.
- Low-reflective glazing in all upper gable windows.
- Planting of 16 Douglas fir and/or Coast redwood trees (5 or more 48 inch box trees, 5 or more 15 gallon size, and 5 at 5 gallon size) located between the house and the line of sight of Año Nuevo State



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Reserve.<sup>2</sup>

- Planting of a 1,200 foot row of Monterey cypress along the access road.
- Erosion control and tree protection BMPs during construction.
- Deed restrictions acknowledging adjacent agriculture and timber production lands, and requiring retention of on-site trees.
- Prohibition on road widening adjacent to the pond-riparian area.

See Exhibits A, B, and C for the County staff report, findings, and conditions approving the Applicant's proposed project.

## 8. Substantial Issue Findings

The Appellants contentions fall generally into four areas: (1) visual resource protection on Santa Cruz County's north coast; (2) protection of ESHA, primarily Monterey pine; (3) appropriate land use on agriculturally zoned parcels; and (4) cumulative impacts in each issue area from this and other such potential development on the north coast. Each of these is discussed in detail in the findings that follow. As summarized below, these issues raise a substantial issue with respect to the project's conformance with the Santa Cruz County LCP.

### A. Visual Resources

#### 1. Applicable Policies

The County's LCP is fiercely protective of coastal zone visual resources, particularly views from public roads, and especially along the shoreline. The LCP states:

***LUP Policy 5.10.10 Designation of Scenic Roads.*** *The following roads and highways are valued for their vistas. The public vistas from these roads shall be afforded the highest level of protection. State Highways: Route 1 – from San Mateo County to Monterey County...*

***LUP Policy 5.10.2 Development Within Visual Resource Areas.*** *Recognize that visual resources of Santa Cruz County possess diverse characteristics and that the resources worthy of protection may include, but are not limited to, ocean views, agricultural fields, wooded forests, open meadows, and mountain hillside views. Require projects to be evaluated against the context of their unique environment and regulate structure height, setbacks and design to protect these resources consistent with the objectives and policies of this section....*

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<sup>2</sup> Note that the Applicant proposes to plant 22 trees (8 each redwood and oak, and 6 cypress) according to proposed plans.



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***LUP Policy 5.10.3 Protection of Public Vistas.*** Protect significant public vistas as described in policy 5.10.2 from all publicly used roads and vistas points by minimizing disruption of landform and aesthetic character caused by grading operations, timber harvests, utility wires and poles, signs, inappropriate landscaping and structure design. Provide necessary landscaping to screen development which is unavoidably sited within these vistas.

***LUP Policy 5.10.5 Preserving Agricultural Vistas.*** Continue to preserve the aesthetic value of agricultural vistas. Encourage development to be consistent with the agricultural character of the community. Structures appurtenant to agricultural uses on agriculturally designated parcels shall be considered to be compatible with the agricultural character of surrounding areas.

***LUP Policy 5.10.11 Development Visible From Rural Scenic Roads.*** In the viewsheds of rural scenic roads, require new discretionary development, including development envelopes in proposed land divisions, to be sited out of public view, obscured by natural landforms and/or existing vegetation. Where proposed structures on existing lots are unavoidably visible from scenic roads, identify those visual qualities worthy of protection (See policy 5.10.2) and require the siting, architectural design and landscaping to mitigate the impacts on those visual qualities. (See policy 5.14.10.)

***LUP Policy 5.5.2 Least Disturbed Watershed Designations.*** Designate the following watershed areas as Least Disturbed Watersheds: ... Green Oaks Creek, Año Nuevo Creek, ...

***LUP Policy 5.5.10 Retaining Undeveloped Lands in Watersheds.*** Encourage property owners in designated watershed areas to sign Open Space Easement contracts or pursue other mechanisms to retain undeveloped lands within Water Supply Watersheds.

***IP Section 13.10.325. Large Dwelling Permit Requirements and Design Guidelines.*** [see Exhibit O for text of 13.10.325]

***IP Section 13.20.130(b)(1) Entire Coastal Zone, Visual Compatibility.*** The following Design Criteria shall apply to projects site anywhere in the coastal zone: All new development shall be sited, designed and landscaped to be visually compatible and integrated with the character of surrounding neighborhoods or areas.

***IP Section 13.20.130(d)(1) Beach Viewsheds, Blufftop Development.*** The following Design Criteria shall apply to all projects located on blufftops and visible from beaches. Blufftop development and landscaping (e.g., decks, patios, structures, trees, shrubs, etc.) in rural areas shall be set back from the bluff edge a sufficient distance to be out of sight from the shoreline, if infeasible, not visually intrusive. In urban areas of the viewshed, site development shall conform to (c) 2 and 3 above.

## 2. County-Approved Project



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The visual analysis required by the County indicates that the project would not be visible from Highway 1, and that it would be partially visible from the public viewshed at Año Nuevo Reserve. When built, its visibility would be somewhat tempered because the proposed project would be nestled into the hills and the outlying tree canopy on the subject site, approximately 2 miles from the portion of the Año Nuevo dune area where its visibility would be greatest, and mostly hidden by the intervening topography and vegetation from public views. The County did not analyze views from portions of the Reserve north of the main elephant seal tour area (towards Franklin Point) and portions inland of Highway One. The County also did not analyze views from Big Basin State Park directly inland. See Exhibit H for applicable State Park and Reserve boundaries.

The County conditioned their approval for earth tone colors (muted green and brown) on the house to ensure that it would blend with the surrounding landscape. In terms of the portion of the proposed structure identified by the County as visible from the Reserve, the County required a forest green roof<sup>3</sup> and a low-reflection glazing on all upper gable windows. The Applicant has proposed to plant 22 trees (8 each redwood and oak, and 6 cypress), and the County has required planting of 16 Douglas fir and/or Coast redwood trees (5 or more 48 inch box trees, 5 or more 15 gallon size, and 5 at 5 gallon size) between the house and the line of sight of Año Nuevo. Furthermore, even though an existing mature eucalyptus grove extends on the adjacent Lee property along the western property line, the County required the planting of a duplicate stand of Monterey cypress (paralleling the eucalyptus grove) on the Applicant's property to further screen the proposed project and protect against a possible scenario whereby the eucalyptus grove disappears. See County conditions in Exhibit C and proposed landscape plan in Exhibit H.

### 3. Consistency with Applicable LCP Policies

#### A. Existing Screening

Existing vegetation provides full to partial screening between public viewing areas and the proposed project site, depending on the viewpoint. This screening includes a large stand of eucalyptus trees (located primarily on the Lee parcel to the west of the subject site) and an arroyo riparian area located between the site and Highway One. Concerns have been raised that this vegetative screen may be altered over time as trees die off, and that its screening qualities will therefore diminish. Part of the reason for this concern is that some of the intervening forest here is made up of Monterey pine; a species currently severely threatened by the pine pitch canker disease.<sup>4</sup> In light of this, and other, concerns, the Applicant's consulting forester, Stephen Staub, chair of the State's Pine Pitch Canker Task Force, evaluated the health and vitality of the intervening forest resource here (see *Analysis of Existing View Screen Forest including Monterey Pine Tree Status and Tree Screening Plan* by Stephen Staub and Stephen McGuirk dated May 2000; Exhibit K).

According to the forester's report, the eucalyptus grove trees are over 100 feet tall, densely planted in several rows, and are regenerating from seed. The grove is composed of trees in good health that are

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<sup>3</sup> The roof coloring would be accomplished by acid treating the copper to be used on the roof. Commission staff has viewed the roof sample and the result is a flat, dark, mottled brown and green surface.

<sup>4</sup> See also ESHA finding for further discussion of the Monterey pine resource at this location and the toll of pine pitch canker disease.



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likely to persist as an intact grove for many years, both spreading and replacing itself over time in the absence of management. These trees are generally healthy and have a good life expectancy. As discussed above, the County conditioned the project for a parallel row of Monterey cypress along the Applicant's side of the existing roadway. The eucalyptus grove provides a dense visual screen of the subject site from Highway One and portions of Año Nuevo State Reserve seaward of the Highway. While there is little reason to believe that the health of the grove will change, eucalyptus is a highly flammable tree that would be very susceptible in the event of a forest fire in the area. The County-required Monterey cypress row represents a sort of insurance for such potential loss of the eucalyptus grove.

The riparian arroyo, butting up on the southern end of the eucalyptus grove, is a mixed forest mostly made up of eucalyptus, Monterey pine, Douglas fir, and coast live oak. The consulting forester estimates that these trees are within roughly 10 to 15 feet from hiding the building site from view (from Point Año Nuevo), and that this would likely occur in the next 5 to 10 years based on a 1 to 3 foot per year growth rate. This area should likewise continue to screen the majority of the Applicant's site from view from Highway One and the Reserve in the future.

In any case, it should be noted that *existing* vegetative screening is not necessarily indicative of *future* vegetative screening. In addition to natural events like forest fire and disease, human intervention on the subject site, and/or on intervening sites between the proposed residence and public view, can radically alter vegetative screening that is present today. A prescient example of the Commission's experience in this area can be found just upcoast of this site at Cascade Ranch. Applicants for the Cascade Ranch Health and Fitness Resort asserted that existing eucalyptus trees between the proposed development and Highway One would screen the development from the Highway (CDP A-3-SMC-89-63). Subsequently, the original developers went bankrupt and the new developer decided to build a campground only. When the Coastanoan campground was built, the new developer cut down the eucalyptus trees, making the site starkly visible from Highway One.

In terms of potential threat to the vitality of Monterey pine here, Mr. Staub's sampling indicated that approximately 40% of the Monterey pine here have moderate to worse symptoms of pitch canker and will in all likelihood die within the next 5 years. However, Mr. Staub estimated that many of the good-sized Monterey pine will survive for between 10 and 40 years. The pine that die will be replaced by Douglas fir, madrone, and coast live oak which will grow more quickly when the shading Monterey pine die. Pine regeneration with better resistance over time to pitch canker is also be expected. Mr. Staub indicates that although its composition may change over time, the forested area providing screening of the site from Año Nuevo can be expected to remain about the same in height, density and screening ability over time. Mr. Staub concludes:

*The Hinman/Año Nuevo House will have a continuing vegetative screen from critical view areas of Año Nuevo State Park, for the following reasons: Within the existing forest screening the proposed house site from Año Nuevo, sufficient numbers of Monterey pines which are tolerant or resistant to pitch canker will persist over a 10 to 40 year period in combination with other existing tree species Douglas Fir, Blue Gum Eucalyptus, tanoak, bay laurel and redwood to provide meaningful visual screening of the house site. Existing seedling to pole sized trees of the same species and madrone, together with future regeneration, will grow up into the*



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*viewshed and maintain visual screening over the medium- to long-term, and continue to block the view of the house from Año Nuevo State Reserve. ... Views from Highway 1 are and will remain unaffected by the project due to topography and the existing Eucalyptus grove that will be retained.*

In conclusion, based upon the forester's analysis, the Commission finds that the screening offered by the existing forest located between the site and Highway One should continue to provide screening of the majority of the overall site (including the proposed building pad location) from view from public vantage points along Highway One and Año Nuevo Reserve.

### B. View from Highway 1

Highway One seaward of the project site is designated by the LCP as a "Scenic Road." This section of Highway 1 is also an officially designated portion of the California Scenic Highway Program. Per LCP Policy 5.10.10, the public vista from Highway One "shall be afforded the highest level of protection." Due to the intervening forest resource and topography, the subject development would not be visible from Highway One and thus is consistent with LCP Policy 5.10.10.

### C. View from Año Nuevo State Reserve

LCP Policy 5.10.3 protects the public vista from Año Nuevo State Reserve. Año Nuevo State Reserve covers approximately 4,000 acres, including roughly 3,000 acres inland of Highway One seaward and north of the subject site. Año Nuevo is a State Reserve as opposed to a State Park. The California Public Resources Code identifies State Reserves as "areas embracing outstanding natural and scenic characteristics of statewide significance." DPR describes the Reserve as follows:<sup>5</sup>

*Fifty-five miles south of San Francisco and the Golden Gate, a low, rocky, windswept point juts out into the Pacific Ocean. The Spanish maritime explorer Sebastian Vizcaino sailed by the point on January 3, 1603. His diarist and chaplain of the expedition, Father Antonio de la Ascension, named it Punta de Año Nuevo for the day on which they sighted it in 1603. New Year's Point. Today, the point remains much as Vizcaino saw it from his passing ship. Lonely, undeveloped, wild. Elephant seals, sea lions, and other marine mammals come ashore to rest, mate, and give birth in the sand dunes or on the beaches and offshore islands. It is a unique and unforgettable natural spectacle that hundreds of thousands of people come to witness each year.*

*Año Nuevo State Reserve is the site of the largest mainland breeding colony in the world for the northern elephant seal, and the interpretive program has attracted increasing interest every winter for the past 19 years. People who hope to see the seals during the winter breeding season are urged to get their reservations early. The males battle for mates on the beaches and the females give birth to their pups on the dunes. During the breeding season, December through March, daily access to the reserve is available via guided walks only. Most of the adult seals are gone by early March, leaving behind the weaned pups who remain through April. The*

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<sup>5</sup> From State Parks web page for Año Nuevo State Reserve.



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*elephant seals return to Año Nuevo's beaches during the spring and summer months to molt and can be observed during this time through a permit system.*

According to DPR, Reserves require the highest level of protection within the California State Park System. The U.S. Department of Interior has similarly designated Año Nuevo State Reserve as one of the 86 'National Natural Landmarks' in the United States. According to the Department of Interior:

*National Natural Landmarks are management areas having national significance as sites that exemplify one of a natural region's characteristic biotic or geologic features. The site must have been evaluated as one of the best known examples of that feature. These areas must be located within the boundaries of the United States or on the Continental Shelf and are designated by the Secretary of the Interior. To qualify as a National Natural Landmark, an area must contain an outstanding representative example(s) of the Nation's natural heritage, including terrestrial communities, aquatic communities, landforms, geological features, habitats of native plant and animal species, or fossil evidence of the development of life on earth.*

Accordingly, Año Nuevo State Reserve is a resource of tremendous local, regional, statewide, and national significance.

There are several structures currently visible within the Año Nuevo viewshed. These include the Big Creek Lumber operation immediately downcoast of Waddell Creek, the RMC Lonestar cement plant in Davenport in the downcoast distance, and the Boling residence (APN 057-061-17) due south of the Hinman project site. For the most part, these structures are visible from the Park, but are sufficiently far away as to make them blend somewhat into the landscape. The Boling residence is more visible than the others since it is closer, is not screened by intervening vegetation, and has white painted trim on the windows. The presence of this building provides a benchmark for understanding how the construction of buildings in Año Nuevo's wild viewscape can change the experience of the Reserve, especially if unnatural building colors, such as white painted windows are used. The most prominent structure visible from within the Park is the Año Nuevo visitors center itself. However, the visitors center approximates a large agricultural barn and is compatible with the overall Park aesthetic.

Commission staff field verification<sup>6</sup> (as seen from the main Reserve path extending from the parking lot to the dunes) found the story-poles and netting (erected to simulate the mass of the proposed structures here) to be barely visible to the unaided eye from the main Reserve trail to the dunes. For a variety of reasons, however, it is difficult to conclude whether the narrow story poles and netting truly approximate the proposed project given that the overall mass cannot easily be duplicated by netting. Likewise, it is not clear that field verification on one semi-sunny afternoon in June can adequately suffice for what will eventually be a year round view (i.e., subject to different weather, angles of sun, elevations of the Año Nuevo Dunes, etc.). In addition, as described above, the Reserve stretches far to the north around Franklin Point and on to Gazos Creek. There are any number of less traveled, though publicly important, viewing areas present within the reserve that this one view angle cannot account for. As such, it can be concluded

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<sup>6</sup> On the afternoon of June 7, 2000.



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that, at a minimum, a portion of the proposed project would be visible from the Reserve.

Moreover, nighttime views (where one would expect light to be coming from the proposed residence) cannot be approximated by story poles viewed during the day. Such nighttime lights in the middle of an otherwise darkened wilderness area particularly impact the viewshed.

DPR's position is that Año Nuevo is a special wilderness area, and a State and national treasure, from which the viewshed should remain unspoiled to the maximum degree possible. The largely undeveloped stretch of coast surrounding the Reserve is a critical element of the overall grandeur of the Reserve that deserves the highest level of protection. DPR concludes (see DPR's letter to the County Board of Supervisors in Exhibit N):

*The California Department of Parks and Recreation believes that the proposed development project, as currently sited and designed, will have a negative impact on the scenic characteristics and quality of Año Nuevo State Reserve.*

Applicable LCP policies dictate protection of public views through “minimizing disruption” (LCP Policy 5.10.3) so as to “have minimal to no adverse impact upon identified visual resources” (LCP Objective 5.10.b). LCP Policy 5.10.11 requires development visible from rural scenic roads, such as Highway One in this rural stretch of the County, to be sited outside of public view. LCP Policy 5.5.2 designates this site as within a Least Disturbed Watershed within which undeveloped natural areas are encouraged to be retained to protect the resource values within. LCP Policy 5.10.3 concludes that screening shall be provided where development is “unavoidably sited” within visual resource areas.<sup>7</sup> In this case, the proposed residence is not “unavoidably sited” in the viewshed. In fact, much of the remainder of the 50 acre property at lower elevations is completely hidden from view and even a large agricultural residence could easily be placed outside of the public viewshed here.

Because Año Nuevo State Reserve is such an important public resource, and because the surrounding North Coast area appears as substantially undeveloped natural open space, any development in this area raises concerns in terms of protecting this critical public viewshed. In this case, the proposed project would introduce at least a portion of a large residential structure into a critical public viewshed when other feasible siting options are available that would remove this development from view. Moreover, the cumulative effect of allowing manmade structures on all legal parcels in the Reserve's viewshed would quickly undermine its unique “lonely, undeveloped, wild” character for which it has received State and national acclaim.<sup>8</sup> As such, the Commission finds that the proposed project raises a substantial issue in terms of the its conformance with LCP Policies 5.10 et seq protecting the visual resource here. Specifically, the project is inconsistent with the policy to site development outside of important public vistas when it is feasible to do so.

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<sup>7</sup> LCP Policy 13.20.130(d)(1) is also cited by the Appellants. This policy, however, applies only to blufftop development. The proposed project is not located on blufftop. Rather, it is located approximately 2 miles inland on the coastal foothills. Similar to the previously cited visual policies, Policy 13.20.130(d)(1) allows *blufftop* development in the public viewshed only if it is infeasible to completely hide it from shoreline view and if it is not visually intrusive.

<sup>8</sup> See also cumulative impact findings.



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### D. View from offshore

LCP Policies 5.10 et seq also protect views from offshore locations of the coast. In other words, the views of boaters, kayakers, swimmers, surfers, et cetera who may be present at different times in the water. Because of the above-described intervening topography and vegetation, most of the proposed residence would be screened from ocean oriented views. However, as described above, at least a portion of the subject residence would be in the Año Nuevo viewshed, this portion of the residence would likewise be in the ocean viewshed. In fact, as one moved further out to sea, more of the residence might be present in this viewshed as the viewing angle flattened out; although this effect would likely be tempered somewhat by the increase in distance.<sup>9</sup>

The offshore waters are part of the Monterey Bay National Marine Sanctuary. Public views from this offshore area of the largely undisturbed north coast represent an important public resource. Although these views are not unfettered by existing development,<sup>10</sup> additions to this critical public viewshed need to be analyzed carefully and applicable LCP policies construed broadly to protect this resource accordingly. In this case, as discussed above, there are other siting options available that would not add development to this public vista. As such, the Commission finds that the proposed project raises a substantial issue in terms of its conformance with LCP Policies 5.10 et seq protecting the visual resource here. Again, the project is inconsistent with the policy to site development outside of important public vistas when it is feasible to do so.

### E. View from onshore trails

Although difficult to say with certainty, it is possible that proposed site might be partially visible from some nearby vantage points along the ridgeline of the coastal range. DPR indicates that the site may be visible from the West Ridge Trail within adjacent Big Basin State Park. There may be other locations as well. It is possible that some hikers along existing trails, and/or along future trails that may be developed should adjacent private lands come into the public domain, may be able to catch glimpses of the proposed subject residence were it to be constructed at this location. Views of such residential development when hiking along rural mountain trails can be extremely disruptive to the hiking experience.

In this case, such glimpses (if any would exist) of the proposed project would be similar to existing glimpses of the neighboring residential structures already developed at this inland foothill location. As far as staff knows, the site is not immediately adjacent to any existing public trails. While such a potential view impact raises an issue, it does not by itself rise to the level of a substantial LCP conformance issue. However, it does provide additional corroborating evidence that a substantial visual resource impact is raised by the proposed project.

### F. Visual Compatibility

LCP Sections 5.10.5, 13.10.313, 13.10.323, 13.10.325, and 13.20.130(b)(1) generally address the need for the proposed large residential development to be sited, designed and landscaped to be visually

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<sup>9</sup> The site is approximately 2 miles inland from Año Nuevo Point.

<sup>10</sup> All of the structures visible from Año Nuevo Point would likewise be visible from offshore.





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compatible and integrated with the character of the surrounding area. Such policies generally dictate the parameters of size, mass, scale, and overall design in relation to the surrounding area. Review of consistency with such policies is more often than not based upon qualitative, discretionary judgement as opposed to more specific requirements. As such, it can be difficult to measure consistency with such objectives.

Nonetheless, there are at least two general themes to test for consistency in this case: 1) compatibility with the surrounding built environment, namely the immediately surrounding “neighborhood” community made up of adjacent large agricultural parcels with individual residences; and 2) compatibility with the overall open space environs of the larger north coast area.

In terms of compatibility with the local “neighborhood” community, the neighboring parcels are currently developed with large (approximately 3,500 and 6,000 square foot) single family dwellings and miscellaneous outbuildings on relatively large (63 and 13 acre) agriculturally zoned parcels. The residence to the north is built in old farm house style while the residence to the south is in a modern log cabin style. The proposed Lee residence (under separate appeal to the Commission) to the west (though not visible from the subject site or the existing adjacent residences), would be more modern “Sea Ranch” angular in style on roughly 84 acres.

Consistency with the local “neighborhood” can be evaluated primarily on architectural style and overall mass/scale. In terms of architectural style, although it might be argued that the proposed gothic revival residential style of the Hinman project is quite architecturally interesting, it could not be said to be similar to the existing character of development in the area. In fact, the Hinman project is modeled after a plantation home in South Carolina and would be unlike any other style of building in the region. In addition, the proposed house style is significantly more formal and ornate than that generally found on other agricultural parcels on the Santa Cruz County north coast. Moreover, although the general pattern of development in the area might be characterized as larger residences on large agricultural parcels, the proposed Hinman house would be substantially larger; almost three times the square footage of the largest neighboring home. As such, its large overall square footage and height raise an issue in terms of compatibility with the surrounding local “neighborhood” community. Even were the “neighborhood” sample widened to other residential dwellings on agricultural parcels in the region, the proposed structure would be one of the largest, if not the largest, residence on the north coast.

In terms of compatibility with the larger open space agricultural north coast, such large residential development within the public viewshed is distinctly counter to the character of this larger area. Furthermore, although the majority of north coast Santa Cruz is largely undeveloped with a smattering of scattered agricultural and residential structures, this particular stretch surrounding Año Nuevo is even less developed than others and is even more so characterized by a wilderness feel and scale. In addition, as described earlier, the subject site is located within a Least Disturbed Watershed within which open retention of the undeveloped lands here is encouraged (LCP Policy 5.5.10).

To be consistent with the north coast’s undeveloped character, the subject development would need to be placed outside of the public viewshed. Because it is not, it raises substantial visual compatibility issues in terms of the proposed project’s conformance with the LCP.



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### 3. Visual Resource Conclusion

The proposed project is located within the particularly critical public viewshed surrounding the Año Nuevo State Reserve along a stretch of mostly undeveloped San Mateo County – Santa Cruz County coastline. LCP visual policies require development here to be sited outside of this viewshed when it is feasible to do so, and require development to be visually compatible and integrated with the character of the surrounding area. Though the County-approved development is mostly hidden by topography and intervening vegetation from public viewing areas, portions of the proposed project would be visible from Año Nuevo State Reserve, the Monterey Bay National Marine Sanctuary, and possibly other inland State Park and other public lands. This raises a substantial issue with respect to the proposed project's conformance with the LCP's visual resource policies cited in this finding.

## B. Environmentally Sensitive Habitat Areas

### 1. Applicable Policies

The LCP is very protective of environmentally sensitive habitat areas. LCP wetland and wildlife protection policies include Policies 5.1 et seq (Biological Diversity) and 5.2 et seq (Riparian Corridors and Wetlands), and Chapters 16.30 (Riparian Corridor and Wetlands Protection) and 16.32 (Sensitive Habitat Protection). In general, these LCP policies define and protect ESHAs, allowing only a very limited amount of development at or near these areas. Relevant LCP policies include:

***LUP Objective 5.1 Biological Diversity.*** To maintain the biological diversity of the County through an integrated program of open space acquisition and protection, identification and protection of plant habitat and wildlife corridors and habitats, low-intensity and resource compatible land uses in sensitive habitats and mitigations on projects and resource extraction to reduce impacts on plant and animal life.

***LUP Policy 5.1.2 Definition of Sensitive Habitat.*** An area is defined as a sensitive habitat if it meets one or more of the following criteria: (a) Areas of special biological significance as identified by the State Water Resources Control Board. (b) Areas which provide habitat for locally unique biotic species/communities, including coastal scrub, maritime chaparral, native rhododendrons and associated Elkgrass, mapped grasslands in the coastal zone and sand parkland; and Special Forests including San Andreas Live Oak Woodlands, Valley Oak, Santa Cruz Cypress, indigenous Ponderosa Pine, indigenous Monterey Pine and ancient forests. (c) Areas adjacent to essential habitats of rare, endangered or threatened species as defined in (e) and (f) below. (d) Areas which provide habitat for Species of Special Concern as listed by the California Department of Fish and Game in the Special Animals list, Natural Diversity Database. (e) Areas which provide habitat for rare or endangered species which meet the definition of Section 15380 of the California Environmental Quality Act guidelines. (f) Areas which provide habitat for rare, endangered or threatened species as designated by the State Fish and Game Commission, United States Fish and Wildlife Service or California Native Plant Society. (g) Nearshore reefs, rocky intertidal areas, seacaves, islets, offshore rocks, kelp beds, marine mammal hauling grounds, sandy beaches, shorebird roosting, resting and nesting areas,



*cliff nesting areas and marine, wildlife or educational/research reserves. (h) Dune plant habitats. (i) All lakes, wetlands, estuaries, lagoons, streams and rivers. (j) Riparian corridors.*

***LUP Policy 5.1.3 Environmentally Sensitive Habitats.*** *Designate the areas described in 5.1.2 (d) through (j) as Environmentally Sensitive Habitats per the California Coastal Act and allow only uses dependent on such resources in these habitats within the Coastal Zone unless other uses are: (a) consistent with sensitive habitat protection policies and serve a specific purpose beneficial to the public; (b) it is determined through environmental review that any adverse impacts on the resource will be completely mitigated and that there is no feasible less-damaging alternative; and (c) legally necessary to allow a reasonable economic use of the land, and there is no feasible less-damaging alternative.*

***LUP Policy 5.1.6 Development Within Sensitive Habitats.*** *Sensitive habitats shall be protected against any significant disruption of habitat values; and any proposed development within or adjacent to these areas must maintain or enhance the functional capacity of the habitat. Reduce in scale, redesign, or, if no other alternative exists, deny any project which cannot sufficiently mitigate significant adverse impacts on sensitive habitats unless approval of a project is legally necessary to allow a reasonable use of the land.*

***LUP Policy 5.1.7 Site Design and Use Regulations.*** *Protect sensitive habitats against any significant disruption or degradation of habitat values in accordance with the Sensitive Habitat Protection ordinance. Utilize the following site design and use regulations on parcels containing these resources, excluding existing agricultural operations: (a) Structures shall be placed as far from the habitat as feasible. (b) Delineate development envelopes to specify location of development in minor land divisions and subdivisions. (c) Require easements, deed restrictions, or equivalent measures to protect that portion of a sensitive habitat on a project parcel which is undisturbed by a proposed development activity or to protect sensitive habitats on adjacent parcels. (d) Prohibit domestic animals where they threaten sensitive habitats. (e) Limit removal of native vegetation to the minimum amount necessary for structures, landscaping, driveways, septic systems and gardens; (f) Prohibit landscaping with invasive or exotic species and encourage the use of characteristic native species.*

***LUP Objective 5.2 Riparian Corridors and Wetlands.*** *To preserve, protect and restore all riparian corridors and wetlands for the protection of wildlife and aquatic habitat, water quality, erosion control, open space, aesthetic and recreational values and the conveyance and storage of flood waters.*

***LUP Policy 5.2.1 Designation of Riparian Corridors and Wetlands.*** *Designate and define the following areas as Riparian Corridors: (a) 50' from the top of a distinct channel or physical evidence of high water mark of perennial stream; (b) 30' from the top of a distinct channel or physical evidence of high water mark of an intermittent stream as designated on the General Plan maps and through field inspection of undesignated intermittent and ephemeral streams; (c) 100' of the high water mark of a lake, wetland, estuary, lagoon, or natural body of standing water; (d) The landward limit of a riparian woodland plant community; (e) Wooded arroyos*



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*within urban areas.*

*Designate and define the following areas as Wetlands: Transitional areas between terrestrial and aquatic systems where the water table is usually at or near the surface, or the land is covered by shallow water periodically or permanently. Examples of wetlands are saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats, and fens....*

***LUP Policy 5.2.3 Activities Within Riparian Corridors and Wetlands.*** *Development activities, land alteration and vegetation disturbance within riparian corridors and wetlands and required buffers shall be prohibited unless an exception is granted per the Riparian Corridor and Wetlands Protection ordinance. As a condition of riparian exception, require evidence of approval for development from the U.S. Army Corps of Engineers, California Department of Fish and Game, and other federal or state agencies that may have regulatory authority over activities within riparian corridors and wetlands.*

***LUP Policy 5.2.5 Setbacks From Wetlands.*** *Prohibit development within the 100 foot riparian corridor of all wetlands. Allow exceptions to this setback only where consistent with the Riparian Corridor and Wetlands Protection ordinance, and in all cases, maximize distance between proposed structures and wetlands. Require measures to prevent water quality degradation from adjacent land uses, as outlined in the Water Resources section.*

***LUP Policy 5.2.7 Compatible Uses With Riparian Corridors.*** *Allow compatible uses in and adjacent to riparian corridors that do not impair or degrade the riparian plant and animal systems, or water supply values, such as non-motorized recreation and pedestrian trails, parks, interpretive facilities and fishing facilities. Allow development in these areas only in conjunction with approval of a riparian exception.*

***LCP Section 16.32.090(c) Approval Conditions.*** *All development activities in or adjacent to a sensitive habitat area shall conform to the following types of permitted uses, and the following conditions for specific habitats shall become minimum permit conditions unless the approving body pursuant to Chapter 18.10 finds that the development will not affect the habitat based on a recommendation of the Environmental Coordinator following a biotic review pursuant to Section 16.32.070.*

<b><i>(A) Environmentally Sensitive Habitat Areas</i></b>		
<b><i>Type of Sensitive Area</i></b>	<b><i>Permitted or Discretionary Uses</i></b>	<b><i>Conditions</i></b>
<b><i>1. All Essential Habitats</i></b>	<b><i>Nature study &amp; research, hunting, fishing and equestrian trails that have no adverse impacts</i></b>	<b><i>Preservation of essential habitats shall be required</i></b>



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	<i>on the species or the habitat; timber harvest as a conditional use</i>	
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...

<b><i>(C) Habitats of Locally Unique Species</i></b>		
<b><i>Type of Habitat</i></b>	<b><i>Permitted or Discretionary Uses</i></b>	<b><i>Conditions</i></b>
<i>1. Special Forests (San Andreas, Live Oak, Woodland/Maritime Chaparral, Indigenous Ponderosa Pine Forest, and Indigenous Monterey Pine Forest)</i>	<i>forest preserve, natural observation, educational instruction residential uses, meeting performance criteria</i>	<p><i>Structures shall be clustered, and/or located near to any existing structure.</i></p> <p><i>Landscaping plans shall include characteristic native species.</i></p> <p><i>Applicants shall enter into a “declaration of restriction” allowing the development and utilization of a prescribed burning program of other means to mimic the effects of natural fires.</i></p> <p><i>For residential development, site disturbance shall not exceed ¼ acre per unit or 25% of the parcel, whichever is less.</i></p>

## 2. County-Approved Project

According to the project biotic assessment<sup>11</sup> the subject site has a number of sensitive habitat areas including Monterey pine forest along the eastern property line, an unnamed wetland/riparian system along the southwest portion of the site to which much of the site drains, and some patches of native grasslands. Although individual specimens have not been identified on the site, suitable habitat exists in and around

<sup>11</sup> *Hinman Property (Año Nuevo House) Biotic Assessment* by The Habitat Restoration Group (dated May 20, 1997) as reviewed and accepted by the County’s consulting biologist, Bill Davilla on November 5, 1998.



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the wetland/riparian system for San Francisco grater snake, California red-legged frog, Southwestern pond turtle, California tiger salamander, Yellow warbler. One Cooper's hawk was identified on the site. The Applicant indicates that red-legged frog have been identified in the pond due north of the subject property (approximately 200 feet from the property line).<sup>12</sup> The Federal and State status of these species is as follows:

<b>Species</b>	<b>Federal Status</b>	<b>State Status</b>
San Francisco grater snake	Endangered Species	Endangered Species
California red-legged frog	Threatened Species	Special Concern Species
Southwestern pond turtle	Special Concern Species	Special Concern Species
California tiger salamander	Candidate Species	Special Concern Species
Yellow warbler	None	Special Concern Species
Cooper's hawk	None	Special Concern Species

Per the LCP, the Monterey pine forest and the wetland/riparian system are environmentally sensitive habitat areas (ESHA). Native Monterey pine (*Pinus radiata*) forest is explicitly defined by the LCP as a Sensitive Habitat (LUP Policy 5.1.2(b) and IP Section 16.32.040); by virtue of this and by virtue of its California Native Plant Society List 1B status (i.e., "Plants Rare, Threatened, or Endangered in California and elsewhere"), native Monterey pine is defined by the LCP as an Environmentally Sensitive Habitat within the meaning of the Coastal Act (LUP Policy 5.1.3 and IP Section 16.32.040). Wetlands and riparian corridors are likewise categorically defined in the LCP as Sensitive Habitats (LUP Policy 5.1.2(i) and (j)) and designated as ESHA (LUP Policy 5.1.3).

The County found that the proposed residence was sited approximately 750 feet from the wetland/riparian system and potential habitat for listed species. The County conditioned the project for erosion control and grading best management practices to avoid any disruption of this area. The County prohibited widening of the access road in the vicinity of the wetland/riparian system.

The County found that although the project was located within the Monterey pine forest resource, the only living pines that would be removed would be a few small saplings. The County conditioned the project to protect trees during construction and to limit any future tree removal.

See Exhibit C for County conditions.

### 3. Consistency with Applicable LCP Policies

#### A. Wetland/Riparian System

LCP Policy 5.1.2 defines the subject wetland/riparian system as ESHA. LCP Policies 5.1.3, 5.1.6 and 5.1.7 dictate that development is strictly limited within this area, and that development that does occur shall not significantly disrupt habitat values (5.1.6), shall be placed as far from the habitat as feasible (5.1.7), and shall require deed restrictions, easements, or other such measures to protect such habitats

<sup>12</sup> Communication with Commission staff July 24, 2000.



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(5.1.7).

In this case, development is not proposed within the wetland/riparian habitat area itself. The existing unpaved access road used by the existing residence to the south would be paved but not widened in the vicinity of the habitat. One would expect that the paving of the road would increase runoff (from increased impervious surface) while at the same time reducing sediment transfer into the resource. Such development activity would not lead to a significant disruption of this resource. Likewise, the existing road is already used by residential traffic. The additional traffic that would be attributable to the proposed project would not substantially change this dynamic and likewise would not lead to a significant disruption of this resource.

The lights that would be visible from the proposed residence at night might have some limited impact on nighttime foraging and movement. However, at a distance of over 750 feet, and given the dense vegetation in and around wetland/riparian area, it is not likely that these nighttime impacts would result in a significant disruption to this habitat.

Although there are locations on the subject site that would be further away from this resource than the site proposed (per LCP Policy 5.1.7), the only further site locations are at higher elevations on the northeastern corner of the site where there are important forest resources (see below) and increased visibility from public viewing areas. As such, read as a whole, the subject location is as far away from this resource as is feasible.

In sum, the subject development is not sited within this wetland/riparian ESHA and would not significantly disrupt the continuation of the habitat values there. As such, and although any such development near ESHA raises concerns, these concerns in this case do not rise to the level of a substantial issue in terms of the project's conformance with the LCP. However, the County did not require any binding legal instrument to protect this ESHA as required by LCP Policy 5.1.7. This omission raises a substantial LCP conformance issue.

### B. Monterey Pine Forest

#### Status of the Pine Resource<sup>13</sup>

Along the Pacific Coast, isolated groves of several different pine species (Monterey pine, Bishop pine, Santa Rosa Island pine, Torrey pine) provide some of the most interesting and scenic landscapes in the coastal zone. These isolated endemic occurrences are termed maritime closed-cone forests. The closed-cone characteristic is typical for fire-influenced forest habitats. On a very hot day (rare in these foggy locales) or in response to fire, the cones open and release their seed. Following a light ground fire, a

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<sup>13</sup> Sources for some of the information in this section include: *Pitch Canker in California*, Andrew J. Storer, Thomas R. Gordon, David L. Wood, and Paul L. Dallara (from the Pitch Canker Task Force Web Site April 1999); *Current Status of Pitch Canker Disease in California*, CDF Tree Notes #20, July 1995; *California Forestry Note #110*, CDF, November 1995; *Pitch Canker Action Plan, Appendix D to SLO County North Coast Area Plan public hearing document*, December 1996; *Pine Pitch Canker Task Force Position Paper*, California Forest Pest Council, January 23, 1997; *RFP for "Developing Programs for Handling...Infected Pine Material within the Coastal Pitch Canker Zone..."*, CDF, December 1997; *The Cambria Forest*, Taylor Coffman, Coastal Heritage Press, 1995; *Pebble Beach Lot Program Final Environmental Impact Report*, EIP Associates, June 1997.



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virtual carpet of seedlings can be found beneath the old tree, after winter rains. Reproduction is most vigorous in recently burned areas, and weakest in the areas that receive the greatest fire-suppression efforts (i.e., the areas that have been divided and developed with residential estates). In a well-manicured yard, pine reproduction is essentially absent.

Within its native range, Monterey pine is found in just four places in the world: the main native stand mantling the Monterey Peninsula; the small stand here near Año Nuevo; the Cambria and Hearst Ranch stands in North San Luis Obispo County, parts of which are the least disrupted of the remaining groves; and a remote and little-known pine forest habitat on the Guadalupe and Cedros Islands located off the Pacific coast of Mexico. The Guadalupe Island grove's survival is uncertain, with fuelwood collecting, overgrazing by goats and severe soil erosion as primary threats. The U.S. groves, in contrast, are generally threatened primarily by habitat conversion (e.g., housing and resort development, golf course development, urbanization), soil erosion (road grading, recreational overuse), and invasive exotic plants (genista or "broom", pampas grass, acacia, eucalyptus, etc.). Commercial logging was an issue in the past, but today is largely confined to small salvage operations.

A more recent concern for the health and viability of the native Monterey pine forest comes from the threat of the pine pitch canker epidemic. According to the California Department of Forestry (CDF), pine pitch canker is a rapidly spreading fungal disease which infects trees primarily through insect wounds in the bark; Monterey and Bishop pines are especially susceptible. CDF also believes that the fungal spores are unintentionally carried over long distances by conveyance of contaminated materials. In addition to transport of contaminated materials by humans, typical vectors for the pathogen include bark beetles and other insects. All three of California's native stands of Monterey pines have now become infected; the status of the island stands in Mexico is less certain.

Pitch canker was confirmed on the Monterey Peninsula at the Pebble Beach fire house in April 1992, then at the Año Nuevo stand in December 1992, followed by the Cambrian stand in November 1994. CDF characterizes the threat to all native Monterey pine stands in California as "severe". On June 4, 1997 the State Board of Forestry defined a Pitch Canker Zone of Infestation which includes all of the coastal counties extending from Mendocino to the Mexico border. While one goal for the Zone is to slow disease spread, neither the State Board of Forestry nor the Department of Forestry and Fire Protection (CDF) has the authority to impose and enforce a quarantine on the movement of infected material.

CDF, the USDA-Forest Service, and Forest Genetics Institute have now expressed concern that not only other maritime pines, but also other native pines in the Coast Range, Cascade Range, and the Sierra Nevada may become diseased. The fungus was confirmed on a Bishop pine in Mendocino County in November of 1992 and has since been confirmed on Monterey pine in Ukiah (in Mendocino County) and Santa Rosa (Sonoma County). While redwoods have shown resistance in greenhouse tests, Torrey pine (from San Diego County), Ponderosa pine and even Douglas fir alarmingly demonstrated susceptibility in these tests. Certain genotypes of other more widely distributed tree species are also threatened by the pitch canker pathogen. For example the limited coastal populations of ponderosa pine, knobcone pine and Douglas-fir in Santa Cruz County are at risk due to their close proximity to infected off-site plantings of Monterey pine.



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Although Monterey pine is by far the most commonly infected species, the pathogen has also been isolated from Aleppo pine, Bishop pine, Italian stone pine, Canary Island pine, Coulter pine, ponderosa pine, Digger pine, knobcone pine, shore pine, Torrey pine and Douglas-fir. The most recent new host records of the pathogen are all from planted trees in Santa Cruz County: shore pine at Sunset State Beach, Torrey pine at Seacliff State Beach, Digger pine in central Santa Cruz County, and knobcone pine and Douglas-fir in southern Santa Cruz County. Pitch canker has also been isolated from Aleppo pine Christmas trees in San Diego County, which was the first record of pitch canker in southern California on a tree species other than Monterey pine.

No cure for infected trees is currently available. Most estimates describe a mortality rate of up to 85%. Many thousands of trees are already dead. It is important to limit the spread of the fungus until an effective means to deal with it is discovered and disease-resistant stock can be made available. A small percentage of Monterey pine appears immune to the disease. However, of the causative species fungus (*Fusarium subglutinans* f. *ssp. pini*), only 5 strains are currently present in California; one of these makes up 70% of the California population of the fungus and an even higher proportion of the population present in the native Monterey pine stands in central California. Individual specimens which exhibit resistance to the one overwhelmingly prevalent strain might prove vulnerable to yet other strains that may become more widespread someday. As a result, the development of a one or only a few lineages of disease resistant stock is not likely to be sufficient to ward off the pitch canker threat.

Because the native range for Monterey pine is limited only to the Año Nuevo stand and three other isolated places on the globe, the main hope for the survival of the Monterey pine worldwide is that there will be enough natural diversity within the native stands so that at least some trees will have genetic disease resistance or tolerance, that these trees can be used to propagate new trees for urban repopulation, and that larger tracts of native pine forest can be preserved and managed so that natural regeneration can take place to repopulate native pine forest habitat. As such, the native pine stands in Año Nuevo area represent both a global resource for forest management and breeding programs to develop disease-resistant stock and forest, and a natural preserve of this sensitive species.

Indeed, until the nature of existing native pine forest immunity is understood, it is critical that the maximum genetic diversity within the native stands of Monterey pine be protected. CDF concludes:

*The restricted native ranges of Monterey pine, Torrey pine, and Bishop pine heightens concern for the effect of pitch canker on these populations. Monterey pine is the most widely planted timber species in the world, and California's native populations represent a global resource for breeding programs. Pitch canker has the potential to reduce the genetic diversity of these species and the integrity of their native stands.*

Finally, because of the various threats to the species, native Monterey pine has been listed as a Federal Species of Concern and a California Native Plant Society List 1B species ("Plants Rare, Threatened, or Endangered in California and elsewhere"); List 1B species are specifically eligible for state listing. Although temporarily withdrawn in December 1999 to allow CDFG to respond to the volume of information submitted, the California Native Plant Society submitted a petition in August 1999 to list Monterey pine as a Threatened Species under the California Endangered Species Act. As described



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above, native Monterey pine forest is defined as ESHA in the certified LCP.

### Impacts to the Pine Resource

The Hinman parcel is located within and at the perimeter of a much larger contiguous indigenous Monterey pine forest immediately to the east of the property. This tree canopy extends exclusively along the eastern property line of the site and is the outlying edge of a larger forested area extending along the steep arroyo of Año Nuevo Creek located east and north of the subject site. This Año Nuevo forest area, extending from the coast to approximately 1000 feet inland of the subject site, is one of four places on the globe where native pine remain. The native pine forest here is differentiated from the other indigenous pine forests by the fact that it is part of a much more mixed forest (including specimens of douglas fir, redwood, madrone, etc.). In contrast, the main Monterey Peninsula stand is almost entirely made up of pine. In contrast again to the main Monterey Peninsula stand, and to a lesser degree the Cambrian stand, that have been severely reduced in size due to development, the indigenous Monterey pine forest here has remained virtually intact in recent years. As such, any development proposal that may impact this resource demands careful scrutiny.

The proposed residence would be sited along the edge of the existing forest within a scattered outlying grove of Monterey pine – some living, some infected with pitch canker – and other trees. Although the County indicated that the only pine that would be removed for the proposed project would be several small pine saplings, the Applicant's plans indicate that no living pine would be removed. This is verified by the Applicant's consulting forester.<sup>14</sup> The consulting forester also indicates that there are only a few dead and/or infected pine in the immediate area where the residence would be constructed.

The LCP recognizes the indigenous Monterey pine forest here as ESHA (LCP Policies 5.1.2 and 5.1.3). The County's approval, though, has interpreted this to mean individual pine tree specimens, rather than the larger forest resource that constitutes the sensitive habitat resource. Although individual sensitive species are important to protect, individual specimens need to be understood within the ecological context that makes up their habitats. Thus, Monterey pine forest needs to be understood as a complete and dynamic habitat – understory and overstory, animals and interactions, soils and climates. A forest is in fact a complex, interdependent web of living organisms rather than just a collective noun for a group of trees in the landscaping sense. At issue is preservation of habitat, not simply mitigation of individual tree impacts. It is to the *forest* that the LCP refers (LCP Policy 5.1.2).

The eastern portion of the subject site that is characterized by Monterey pine forest, and the land within this outlying boundary – including the proposed building pad – constitutes Monterey pine forest habitat. The County's staff report concurs stating that "the proposed building site is located within the Monterey pine forest area." In the absence of development on this more steeply sloping portion of the subject site, Monterey pine would be expected to expand and grow in this current clearing in this forest area. In fact, the forester's report indicates that such regeneration is occurring currently nearby with approximately 20 healthy pine saplings growing just west of the proposed house site. In other words, the sensitive species is using the sensitive species habitat here.

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<sup>14</sup> Steven Staub, Chair of the State's Pine Pitch Canker Task Force.



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In fact, it is likely that historically, before the site was cleared for agricultural purposes in the last century, that the entire site was part of the larger Año Nuevo pine forest. The Applicant's consulting forester indicates that the historic range of the Año Nuevo pine forest was approximately 11,000 to 18,000 acres – this is down to approximately 1,500 to 2,000 acres today.<sup>15</sup> The site is located within the appropriate climatic range, and is bracketed both inland and seaward by existing pine forested areas.<sup>16</sup> In the absence of human intervention, the entire site would likely convert to indigenous pine forest indicative of the Año Nuevo stand. At the least, the southeastern half of the property appears to provide habitat for native pine as evidenced by the approximately 20 healthy pine saplings growing between the northeastern and southwestern property lines and the associated forested areas at those property lines. In other words, the forest appears to be regenerating across the subject site as of today.

Similar to Coastal Act section 30240, the Santa Cruz County LCP does not allow non-resource dependent development within ESHA. Residential development within the proposed location would not be dependent on the resource and does not meet any of the other LCP Policy 5.1.3 tests. Moreover, residential development here would not “maintain or enhance the functional capacity of the habitat” as required by LCP Policy 5.1.6. In fact, such development would remove habitat from its primary function. LCP Section 16.32.090(c)(A)(1) does not include residential uses as either a permitted or discretionary use within essential habitats. In addition, residential development brings with it fire suppression concerns and requirements (such as defensible clear space around the house). It is very likely that these concerns and/or requirements would lead to future removal of indigenous Monterey pine forest at this site. This is all the more possible since the County did not otherwise protect these resources through a legal instrument as required by LCP Policy 5.1.7(c).

Furthermore, as described above, prescribed and natural burns within such Monterey pine forests can be extremely important for the continued vitality of the forest resource. Residential development within and adjacent to the forest resource presents a conflict with pursuing such management techniques due to concerns for residential structures. The LCP requires that development within or adjacent to indigenous Monterey pine forest be accompanied by a property restriction allowing for the development and implementation of prescribed burn programs; this property restriction was not a part of the approved project as required by LCP Section 16.32.090(c)(C)(1).

To the extent that other portions of the site would not be considered ESHA, alternative siting may be possible outside of the Monterey pine forest habitat, but this has not been pursued as required by LCP Policy 5.1.7.<sup>17</sup>

Finally, LCP Section 16.32.090(c)(C)(1) requires that residential development within or adjacent to

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<sup>15</sup> Communication with Commission staff July 24, 2000.

<sup>16</sup> There are also interspersed agricultural clearings seaward of the site that were likely part of the historical Monterey pine range here.

<sup>17</sup> As described in this finding, it is possible that the entire site is either Monterey pine forest habitat and/or wetland/riparian habitat. Further biotic assessment and mapping would be required to understand this dynamic completely. In any case, the site is either ESHA or immediately adjacent to ESHA. LCP Policy 5.1.2(c) and LCP Section 16.32.040 (Sensitive Habitat and Environmentally Sensitive Habitat Area definitions) indicate that areas immediately adjacent to Monterey pine forest habitat should be themselves considered ESHA. Accordingly, the LCP's ESHA policies will come into play regardless. LCP Section 16.32.090(c)(A)(1) does not include residential uses as either a permitted or discretionary use within essential habitats.



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indigenous Monterey pine forest shall not exceed  $\frac{1}{4}$  acre or 25% of the parcel, whichever is less. The proposed residential compound and the proposed access driveway are proposed both adjacent to and within Monterey pine habitat. Since the subject parcel is approximately 50 acres, the LCP limits site disturbance in this case to  $\frac{1}{4}$  acre (or 10, 890 square feet). The proposed residential compound (house, garage, pool, paths, and surrounding ornamentally landscaped grounds) would disturb roughly over an acre and the proposed driveway would disturb roughly 14,000 square feet. This is approximately 6 times the LCP's maximum allowable area of disturbance here.

For these reasons, the proposed project raises a substantial issue in terms of the project's conformance with the LCP's Monterey pine forest protection policies.

#### 4. ESHA Conclusion

Native Monterey pine forest is found in just four places in the world, including the larger forest area of which a portion is located on the subject site. The subject indigenous pine stand is the least disturbed of the 3 California locales; and though less is known about the Mexican island stands, probably the least disturbed of all the indigenous pine stands in the world. The very existence of pine is threatened by pitch canker. The survival of the genetic diversity of the species is dependent in part on maintaining the four native groves. The subject development is sited within indigenous Monterey pine forest habitat that is defined as ESHA by the LCP. The proposed residence is not dependent on siting within the ESHA and does not meet any of the other LCP tests for allowing development within ESHA. The proposed project would significantly disrupt the continuation of the habitat values within the ESHA contrary to the LCP. There may be alternative sites available on the subject 50 acre parcel outside of the LCP-defined ESHA that would keep a more appropriate distance from this threatened ESHA. The proposed site disturbance is roughly 6 times that maximum allowed by the LCP. The County did not require a property restriction allowing for prescribed burns as required by the LCP. The County did not require any binding legal instrument to protect ESHA (both for Monterey pine and the wetland/riparian system) on site as required by LCP. For all these reasons, the proposed project raises a substantial issue with respect to its conformance with the LCP's ESHA policies cited in this finding.

### C. Land Use – Agriculture

#### 1. Applicable Policies

LCP agricultural land use policies specifically applicable to the subject site include:

***LUP Policy 2.22.1 Priority of Uses within the Coastal Zone. Maintain a hierarchy of land use priorities within the Coastal Zone:***

*First Priority: Agriculture and coastal-dependent industry*

*Second Priority: Recreation, including public parks; visitor serving commercial uses; and coastal recreation facilities.*

*Third Priority: Private residential, general industrial, and general commercial uses.*



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***LUP Policy 2.22.2 Maintaining Priority Uses.*** Prohibit the conversion of any existing priority use to another use, except for another use of equal or higher priority.

***LUP Objective 5.13 Commercial Agricultural Land.*** To maintain for exclusive agricultural use those lands identified on the County Agricultural Resources Map as best suited to the commercial production of food, fiber, and ornamental crops and livestock and to prevent conversion of commercial agricultural land to non-agricultural uses. To recognize that agriculture is a priority land use and to resolve policy conflicts in favor of preserving and promoting agriculture on designated commercial agricultural lands.

***LUP 5.13.5 Principal Permitted Uses on Commercial Agricultural (CA) Zoned Land.*** Maintain a Commercial Agricultural (CA) Zone District for application to commercial agricultural lands that are intended to be maintained exclusively for long-term commercial agricultural use. Allow principal permitted uses in the CA Zone District to include only agricultural pursuits for the commercial cultivation of plant crops, including food, flower, and fiber crops and raising of animals including grazing and livestock production.

***LUP 5.13.6 Conditional Uses on Commercial Agricultural (CA) Zoned Lands.*** All conditional uses shall be subject to standards which specify siting and development criteria; including size, location and density. Allow conditional uses on CA zoned lands based upon the following conditions: (a) The use constitutes the principal agricultural use of the parcel; or (b) The use is ancillary incidental, or accessory to the principal agricultural use of the parcel; or (c) The use consists of an interim public use which does not impair long term agricultural viability; and (d) The use is sited to avoid conflicts with principal agricultural activities in the area; and (e) The use is sited to avoid, where possible, or otherwise minimize the removal of land from agricultural production.

***LUP 5.13.7 Agriculturally Oriented Structures.*** Allow only agriculturally oriented structures or dwellings on Commercial Agricultural Land; prohibit non-agricultural residential land use when in conflict with the fundamental objective of preserving agriculture.

***LUP 5.13.28 Residential Uses on Commercial Agricultural Land.*** Issue residential building permits pursuant to policy 5.13.32 in areas designated as commercial agricultural land, only upon documentation that: (a) The residential use will be ancillary to commercial agricultural use of the parcel (See criteria in policy 5.13.29); or (b) The parcel is less than one net acre in size or has physical constraints other than size which preclude commercial agricultural use. In either case, residential development shall be allowed only if the residential use does not conflict with on-site or adjacent agricultural activities and the building site has approved agricultural buffer setbacks.

***LUP 5.13.29 Residential Use Ancillary to Commercial Agriculture.*** Utilize the following criteria for determining when a residential use would be ancillary to commercial agriculture:

(a) Documentation that the farmable portion of the subject parcel, exclusive of the building



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*site, is large enough in itself to constitute a minimum economic farm unit for three crops other than greenhouses suited to the soils, topography, and climate of the area; or*

- (b) Documentation that the owners have a long-term binding arrangement for commercial agricultural use of the remainder of the parcel by another party; and*
- (c) Documentation that, concurrent with each of the above, the structure is sited in such a manner so as to minimize possible conflicts with commercial agriculture in the area, and to remove no land from production (or potential production) if any unfarmable potential building site is available, or if this is not possible, to remove as little land as possible from production.*

### ***IP Section 13.10.311(a) Purposes of Agricultural Districts, “CA” Commercial Agriculture.***

*The purposes of the “CA” Commercial Agriculture Zone District are to preserve the commercial agricultural lands within Santa Cruz County which are a limited and irreplaceable natural resource, to maintain the economic integrity of the economic farm units comprising the commercial agricultural areas of the County, to implement the agricultural preservation policy of Section 16.50.010 of the Santa Cruz County Code, and to maintain and enhance the general welfare of the county as a whole by preserving and protecting agriculture, one of the County’s major industries. Within the “CA” Commercial Agriculture Zone District, commercial agriculture shall be encouraged to the exclusion of other land uses which may conflict with it.*

### ***IP Section 13.10.314 (Required Special Findings for “CA” and “AP” Uses.***

*(a) All Uses. For parcels within the “CA” Commercial Agriculture and “AP” Agricultural Preserve Zone Districts, the following special findings must be made in addition to the findings required by Chapter 18.10 in order to approve any discretionary use listed under Section 13.10.312 which requires a Level V or higher Approval except Agricultural Buffer Determinations:*

- 1. That the establishment or maintenance of this use will enhance or support the continued operation of commercial agriculture on the parcel and will not reduce, restrict or adversely affect agricultural resources, or the economic viability of commercial operations, of the area.*
- 2. That the use or structure is ancillary, incidental or accessory to the principal agricultural use of the parcel or that no other agricultural use is feasible for the parcel.*
- 3. That single-family residential uses will be sited to minimize conflicts, and that all other uses will not conflict with commercial agricultural activities on site, where applicable, or in the area.*
- 4. That the use will be sited to remove no land from production (or potential production) if any nonfarmable potential building site is available, or if this is not possible, to remove as little land as possible from production.*



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*(b) Residential Uses in the Coastal Zone. For parcels within the “CA” Commercial Agricultural and “AP” Agricultural Preserve Zone Districts in the Coastal Zone, the following special findings shall be made in addition to those required by Chapter 18.10 and paragraph (a) above in order to approve any discretionary residential use including a single family residence, a permanent caretaker’s residence, or habitable accessory structure. These findings shall be based upon a review and determination by the Agricultural Policy Advisory Commission.*

- 1. That the parcel is less than one acre in size; or that the parcel has physical constraints (such adverse topographic, geologic, hydrologic or vegetative conditions) other than size which preclude commercial agricultural use; or that the residential use will be ancillary to commercial agricultural use of the parcel based upon the fact that either:
  - (i) The farmable portion of the parcel, exclusive of the building site, is large enough in itself to constitute a minimum economic farm unit for three crops, other than greenhouses, suited to the soils, topography and climate of the area; or*
  - (ii) The owners of the subject parcel have a long-term binding agreement for commercial agricultural use of the remainder of the parcel, such as an agricultural easement.**
- 2. That the residential use will meet all the requirements of Section 16.50.095 pertaining to agricultural buffer setbacks.*
- 3. That the owners of the parcel have executed binding hold-harmless covenants with the owners and agricultural operators of adjacent agricultural parcels. Such covenants shall run with the land and shall be recorded prior to issuance of the Development permit.*

## 2. County-Approved Project

As described earlier, the subject site was originally part of the larger Steele Ranch that at one time encompassed roughly 7,000 acres dedicated primarily to dairy operations. The properties were subdivided in the 1950s creating the subject parcel and its neighboring properties. Historic grazing on this parcel has long since ceased and the land has lay fallow for some time.

Residential development is a conditional, discretionary use in the subject CA zone district applicable to the parcel. Specific findings to allow such a use must be made pursuant to LCP Section 13.10.314. In this case, the County found that: siting the proposed residence within the Monterey pine forest would keep the residence away from farmable portions of the property; that the residence would not preclude the potential for renewed agricultural use at the property; and that the residence would lie a sufficient distance (300 feet) from adjacent agriculturally designated lands to adequately protect from potential land use conflicts. The project exceeds the agricultural buffer setback requirements of LCP Section 16.50.095 (200 feet) and the local permit has been conditioned to require the property owner to sign and record an acknowledgment



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of adjacent agricultural land uses and a hold harmless agreement to be recorded on the property deed. The County found the proposed residence to be ancillary to any agricultural use since the farmable portion of the parcel (20 to 40 acres) would still be large enough to constitute a minimum economic farm unit capable of supporting livestock grazing. The County found that the dwelling would cover approximately one acre, or about 2% of the gross parcel area.

The County found that the property has value for renewed agricultural production. Specifically, the property could support a small herd of dairy cattle or goats or other livestock in the large meadow area, or, in the alternative, crops such as cut flowers, ollalie berries, kiwi fruit, pumpkins, squash, or Christmas trees could be cultivated. Overall, the parcel is large enough to constitute an economic farm unit for several crops and the County has found the presence of prime agricultural soils here.

### 3. Consistency with Applicable LCP Policies

The LCP is extremely protective of agricultural lands and is reflective of the policies of the Coastal Act by its encouragement of agricultural uses to the exclusion of other land uses that may conflict with them. In short, the policies of the LCP acknowledge that coastal agricultural lands are an irreplaceable natural resource and the protection of their economic integrity as economic farm units is vital. In order to accomplish this, the LCP sets forth a number of requirements. These include, but are not limited to, defining allowable agricultural uses (including allowed support and related facilities), principal and conditional uses, development standards, and easement requirements. In addition to the general requirements of the CA Commercial Agriculture District, the LCP requires that special findings be made to allow a conditional, discretionary residential use on a CA-zoned property. .

LCP Section 13.10.314 sets forth four general tests that must be met before a use can be allowed in the CA district. In sum, these are: (1) that maintenance of the use will enhance or support agriculture, and will not reduce, restrict or adversely affect agricultural operations in the area, (2) that the use is ancillary, incidental or accessory to agricultural use of the parcel or no other agricultural use is feasible, (3) that single family residential uses will be sited to minimize conflicts, and (4) that the use will not remove land from production (or potential production) or will remove as little land as possible from production.

LCP Section 13.10.314 also requires that special findings be made to allow a residential use here. These requirements are in light of the conditional, discretionary nature of the residential use on these CA lands. These requirements restrict residential uses upon CA parcels to parcels: (1) that are less than one acre in size, (2) that are so physically constrained (other than overall size) that they preclude commercial agricultural use, or (3) where the residential use would be ancillary to commercial agricultural use of the parcel because either (a) the farmable portion of the property constitutes a minimum economic farm unit without the building site or (b) there is a binding agreement for continued commercial agricultural use of the remainder of the site. In any case, the residential use must, in addition to other requirements of the LCP, adhere to the agricultural buffer setbacks of LCP Section 16.50.095 and execute a hold harmless covenant with the owners and agricultural operators of adjacent agricultural parcels.

The general incompatibility of residential and agricultural land uses is highlighted by the fact that the proposed project is a conditional, discretionary use at this site. As such, the allowance of the proposed





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use is not a right under the LCP and is subject to discretionary review for consideration. Reasons for this conditional use designation are rooted in the inherent incompatibility of these two land uses. Typical incompatibility issues raised at urban-agricultural land use interface include: noise, dust, and odors from agricultural operations; trespass and trash accumulation on agriculture lands; road-access conflicts between agriculturally related machinery and automobiles; limitations of pesticide application, urban garden pest transfer, theft, vandalism; and human encroachment from urban lands to name a few. Such incompatibilities can threaten continued agricultural cultivation when its proximity to non-agricultural uses (such as residential) raises issues and/or concerns that standard agricultural practices (such as chemical spraying and fertilizing) or ongoing agricultural by-products (such as dust and noise from machine operations – cultivating, spraying, harvesting, et al) are a threat to the *non*-agricultural uses.

In sum, the LCP requires that the proposed residential use be incidental to the agricultural use of the site, and that it not restrict, reduce, or otherwise adversely affect continued or renewed agricultural production.

The County findings pursuant to LCP Section 13.10.314 are based primarily upon the proposed residence's location outside of the most agriculturally viable portions of the property. In other words, because the residence would be placed on the higher elevations within the Monterey pine forest, the residence would not adversely impact the prime agricultural area running north to south along the western portion of the property.

Although such siting raises other forest resource concerns as detailed in the findings above, the Commission can concur that the proposed building site would stay out of the most agriculturally viable portion of the site as indicated by the County, and as required by LCP Section 13.10.214. As such, the project generally satisfies the first portion of the Section 13.10.314 test (namely that agricultural use, in this case future agricultural use of the property, not be adversely affected). However, the project raises fundamental questions whether such an enormous residential structure can be considered “ancillary, incidental, or accessory” to commercial agricultural use of the property as also required by LCP Section 13.10.214. As mentioned, the proposed project would occupy approximately one acre of the parcel. In fact, the applicant proposes to construct a 3 story, 51 foot tall, 15 room single-family dwelling, with a basement, 3-car connected garage (with a room above), swimming pool and assorted pathways, courtyards, and retaining walls. In total, approximately 15,000 gross square feet of structures would be developed. It is questionable if the 15,000 square foot house and pool are ancillary, incidental, or accessory (Section 13.10.314(a)(2) and (b)(1)) to agriculture. In fact, though a somewhat subjective test, the proposed dwelling stretches the limit of interpretation to find that it is a “agriculturally oriented dwelling” as required by LCP Policy 5.13.7. Such a development would be considered a very large farm house if it were even one-third that size. In fact, when compared with other Santa Cruz agricultural properties, the proposed structural development is far larger than other residences constructed as ancillary facilities on agricultural lands. Although a survey would be necessary to confirm, anecdotal evidence suggests that it would be the largest such agricultural residence in Santa Cruz County, and one of the largest residences in the County overall.

The applicable LCP test for “ancillary” in this case is that the farmable portion of the property, exclusive of the building site, would constitute a minimum economic farm unit for three crops, other than greenhouses (LCP Section 13.10.314(b)(1)(i)). The LCP defines “minimum economic farm unit” as



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follows:

*An area of farmland of sufficient size to provide a return to land and capital investment or a return to cover costs of a new investment*

In this case, the County has indicated that even with the residential development, the large meadow area portion of the property could support a small grazing herd, or that it could support commercial agricultural crops such as cut flowers, ollalie berries, kiwi fruit, pumpkins, squash, or even Christmas trees. Although the soils are not ideal, irrigation and good management practices would make such operations economically feasible. The Commission can concur that this is the case. Since the proposed project meets this test, LCP Section 13.10.314(b)(1)(i) specifies that the subject residential use is in fact ancillary to agricultural use of the parcel's remainder. So while the Commission must observe that such a finding that this enormous residential development is "ancillary" to agricultural use stretches the limit of reason, it is within the parameters of the applicable LCP policies to find it so. As is the "agriculturally oriented dwelling" requirement of LCP Policy 5.13.7. It is still, however, a discretionary use for which some discretion is allowed. Accordingly, although the large overall mass and scale of the proposed estate compound raises issues in terms of the proposed project's conformance with the LCP's agricultural land use policies, this does not by itself in this case rise to the level of a substantial LCP conformance issue because agriculture is not precluded. However, in tandem with the other substantial LCP conformance issues cited in these findings, because the huge residential compound is proposed absent any agricultural operation on the site, because it is the lowest priority use within the LCP's use hierarchy, because the potential for cumulative impacts on north coast agriculture from the "estatization" of CA lands, there is a substantial LCP conformance issue.

In addition, although the County findings state that the, "permit has been conditioned to require that the property owners sign and record an Acknowledgement of adjacent agricultural land and a hold harmless agreement on the subject parcel's property deed restriction," the County's condition only requires "a statement acknowledging the adjacent agricultural land use and the agricultural buffer setbacks." The Commission's experience has been that the precise wording of such an acknowledgment is critical to ensuring that future issues do not arise that would threaten ongoing normal agricultural operations on adjacent properties. It may be that the County's condition is sufficient in this regard. This would be the case if it invoked all of the parameters of LCP Section 16.50.090 detailing applicable deed restriction language for development adjacent to agricultural lands. While it can be assumed that the County would use Section 16.50.090 deed restriction language, this is not explicitly stated. Without knowing what the deed restriction would contain, it is difficult to say with certainty whether this LCP requirement is met in this case. While alone such a question might not rise to the level of a substantial issue, it corroborates the fact that the proposed project presents an overall agricultural policy substantial issue.

#### 4. Land Use – Agriculture conclusion

North coast agricultural lands are a finite resource for which the LCP demands the highest level of protection. Although construed narrowly, the LCP would allow for such a huge residential compound in the site proposed (were there not otherwise visual and ESHA issues as previously described), the enormity of the proposed development stretches the limits of the LCP for such a discretionary, conditional



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use at this location. It may be that the remainder of the site would constitute a “minimum economic farm unit,” but it is more difficult to make the case that such a huge residential development is “ancillary, incidental, or accessory” to commercial agricultural use of the property. And while the Commission is in no way trying to dictate what types of residence are appropriate for individuals engaged in agricultural activities, it is clear that the subject residence would be one of the largest, if not the largest, such residences on agricultural lands in Santa Cruz County. It raises a question as to whether the proposed residential compound qualifies as an “agriculturally oriented dwelling” as required by the LCP. Further, although the huge size of the development may be *allowed* based upon setback versus height tradeoffs prescribed in the LCP,<sup>18</sup> it remains a discretionary decision as to the scale and character of such an ancillary use on agricultural land. Because of its enormous mass and scale as compared to ancillary residential uses on other agriculturally zoned properties, because the huge residential compound is proposed absent any agricultural operation on the site, because it is the lowest priority use within the LCP’s use hierarchy, because the potential for cumulative impacts on north coast agriculture from the “estatization” of CA lands, because of the potential for de facto conversion of CA lands to residential uses, and in tandem with the substantial issues raised elsewhere in these findings, the proposed project raises a substantial issue with respect to its conformance with the LCP’s agricultural use policies cited in this finding.

## D. Cumulative and Growth Inducing Impacts

### 1. Applicable Policies

The LCP protects against impacts associated with individual projects such as this, as well as the cumulative impact from such projects in relation to current and potentially planned development. The LCP states:

***LUP Policy 2.1.4 Siting of New Development.*** *Locate new residential, commercial or industrial development, within, next to, or in close proximity to existing developed areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on environmental and natural resources, including coastal resources.*

### 2. County-Approved Project

The County found that the project itself, as conditioned, would not induce future growth by virtue of its CA zoning, location within a Least Disturbed Watershed, and location adjacent to larger TP zoned lands.

### 3. Consistency with Applicable LCP Policies

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<sup>18</sup> The LCP does not contain an outright cap on the size of residential development in the CA district. In fact, although the maximum height for residential structures in the CA zoning district is 28 feet, LCP Section 13.10.323(e)(5) allows the height to be increased by one foot for every 5 feet of increased yard setback. Using the large size of the lot to increase the required yard setbacks, the Applicant was able to use this formula to pursue a 51 foot residence at this location without a variance. On very large lots, it is conceivable that the LCP might allow even taller residential structures.



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The LCP requires that development not individually, or cumulatively when considered in the context of other existing and reasonably foreseeable future development, significantly adversely affect coastal resources. As discussed in the findings above, the proposed project by itself results in adverse ESHA and visual, and potentially agricultural land use, impacts. Any such impacts would be exacerbated by similar projects that may take place in the foreseeable future both in the general Año Nuevo area as well as the larger north Santa Cruz County – south San Mateo County region that is largely undeveloped at present time.

The concern is that these large, mostly undeveloped and agricultural parcels, will be used in the future for a plethora of “monster” trophy homes. These large trophy homes, where visible, would redefine the character of the agrarian and wilderness landscape here. There is also the question of whether such large homes have relatively more resource impacts than smaller homes due to increased water consumption, increased waste water production, larger impervious surfaces, more traffic, et cetera generated by the increased level of upkeep necessary to maintain larger homes and grounds. Part of this is because larger estate homes and grounds can include more persons involved in day to day maintenance (such as maids, gardeners, pool persons, etc.); such has been the Commission’s experience in such large home enclaves as Pebble Beach.

The Applicant has submitted a cumulative impact analysis for the immediately surrounding 19 private parcels<sup>19</sup> (see letter report from the Applicant dated received May 15, 2000, Exhibit L). This analysis concludes that, with the exception of the proposed Lee house located seaward of the proposed project site (Appeal A-2-SMC-99-066), any future development on the remaining large privately held parcels would be limited by the zoning (CA and TP) and could be hidden from public view utilizing the topography and intervening vegetation here. This analysis seems reasonable because: (1) CA zoned land is limited to a maximum density of 40 acres per dwelling unit; (2) TP zoned land is limited to a maximum density of 40 acres per dwelling unit; (3) allowable land division for CA and TP zoned lands is limited; (4) properties located within Least Disturbed Watersheds (such as the subject site) require a minimum 40 acre parcel; and (5) residential development is a discretionary conditional use as opposed to a principal permitted use in these areas.

With regards to growth inducement, it is not likely that the subject residence would induce future growth in the immediately surrounding parcels. The project does not propose a new road, rather it relies on an existing road providing access to other residential structure tucked away at this location. There are not additional undeveloped properties that could be reached by the road here. The zoning and least disturbed watershed designation here precludes additional dwelling units and/or land division. The same can generally be said for the immediate surrounding area. In any case, any such future development proposals would be subject to the same policies as this proposal, dictating avoidance of sensitive habitats and public viewsheds.

It is possible that the Commission’s approval of a large dwelling here could induce similar future development proposals by virtue of the perception that such development was deemed appropriate by the

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<sup>19</sup> The vast majority of lands surrounding the subject site are in public ownership including Año Nuevo State Reserve and Big Basin Redwoods State Park; see Exhibit H.



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Commission, but this growth inducing “impact” would be very difficult to distinguish with any certainty. Staff notes, in any case, that the Lee house also currently on appeal to the Commission to the west would be approximately 6,500 square feet. Just upcoast, San Mateo County is currently reviewing another CDP application for a 15,000 square foot house (Applicant Steve Blank).

#### 4. Cumulative Impact Conclusion

The largely undeveloped north Santa Cruz County – south San Mateo County region is a critical coastal resource area. Maintaining the agrarian and wooded rural countryside between Half Moon Bay and the City of Santa Cruz is of utmost County and State importance. The LCP protects this resource through the ESHA, visual, and land use policies described in the previous findings; it also protects against potential cumulative, growth-inducing types of effects pursuant to LCP Policy 2.1.4. The proposed project as approved by the County may induce a similar type of future growth in this area to the extent such an approval sets precedence for the LCP policy interpretation that residential structures may be visible within the critical viewshed when other hidden siting options exist. Such potential future development would have similar impacts as those attributable to the proposed project as discussed in these findings; these impacts would be significant both on an individual and cumulative basis. For all these reasons, the proposed project raises a substantial issue with respect to its conformance with the LCP’s cumulative and growth inducing impacts policies cited in this finding.

#### E. Substantial Issue Conclusion

The proposed project would place an enormous residential estate on a agriculturally zoned property in the critical public viewshed surrounding the Año Nuevo State Reserve along a stretch of mostly undeveloped San Mateo County – Santa Cruz County coastline to the detriment of ESHA and visual resources protected by the LCP. The project raises critical and substantial issues with respect to the proposed project’s conformance with the LCP’s visual, ESHA, and agricultural land use policies; all of these issues are exacerbated by their potential for cumulative impacts in the future. Due to these issues, the Commission takes jurisdiction over the coastal development permit for this project.

In order to analyze the project on its merits in a de novo review, additional biotic assessment and analysis will be necessary to identify where on the subject site a residential structure could be sited consistent with the LCP. At a minimum, such additional analysis needs to better evaluate the site for its potential as native Monterey pine forest habitat. Such additional assessment and analysis would map the soils and types of vegetative cover on the site, provide information on the climatic regime (fog and weather patterns), and indicate how the soils, climate, and understory species contribute to Monterey pine forest habitat at this location. Such information should be accompanied by mapping and air photo documentation of the historic extent (and changes thereto) of the Año Nuevo native pine stand over the years, as well as summation of relevant major research to date on this native stand, and other native stands as appropriate.

After Commission staff have reviewed this additional biotic assessment and analysis, and further evaluated the biology of the site, the portions of the site, if any, that are not ESHA will be better defined. At that time, it will be possible to prepare a de novo staff report on the merits of the project. This future



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review may need to take into account property rights under the Constitution and weigh the relevant visual, ESHA, and agricultural LCP policies to determine the most appropriate siting of a home on the parcel.

Finally, the Commission notes that the LCP is not currently structured to strictly prohibit development on the rural north coast.<sup>20</sup> In fact, as described in these findings, substantial development is allowed by the LCP on these mostly large parcels. As a result, additional proposals such as this will likely make their way through the local process eventually. Although the County has indicated that refinements to the large dwelling ordinance (see Exhibit O) are forthcoming, the Commission understands that such refinements are meant to reign in the overall mass and scale of large dwellings.<sup>21</sup> Some such refinements along these lines would generally be welcomed. However, if the objective is to retain the rural open space north coast area intact, or even relatively intact, the County would be well served by developing a complementary ordinance that expressly prohibits development visible from County-defined critical viewing areas (e.g., something similar to the Critical Viewshed ordinance of the Big Sur Coast Segment LCP). Such an ordinance would alleviate Commission concerns that LCP policies were being construed to allow development within the public viewshed when it is otherwise feasible to site and/or scale development in such a way as to protect this national treasure that is Santa Cruz County's north coast. Such a policy can help to take interpretation and subjectivity out of these types of coastal permitting decisions, and can clarify the rules involved for all interested parties; ultimately, such a critical viewshed policy in tandem with additional large dwelling review tools and controls would better protect the critical coastal resources here.

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<sup>20</sup> Although development in view of LCP-designated "Coastal Special Scenic Areas" does include such a prohibition (LCP Policies 5.10.16 and 5.10.17), this designation is applied to only two confined areas (the Swanton Road scenic area and the Bonny Doon sandstone formations, both downcoast of this site). Further, the prohibition of development within the Coastal Special Scenic Areas public viewshed applies only to Swanton Road. Even this prohibition allows for the use of landscaping to screen development from public view.

<sup>21</sup> When the County approved the subject development on March 14, 2000, the Board directed the Planning Department to develop an analysis of the tools available to the County to address the issue of large homes in both urban and rural areas.

